

SITE REMEDIATION SERVICES, INC.,)	AGBCA No. 99-161-1
)	
Appellant)	
)	
Representing the Appellant:)	
)	
John J. O'Brien, Jr.)	
Moller, Peck and O'Brien)	
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Hartford, Connecticut 06114)	
)	
Representing the Government:)	
)	
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DECISION OF THE BOARD OF CONTRACT APPEALS

February 15, 2000

Before HOURY, POLLACK and VERGILIO, Administrative Judges.

Opinion for the Board by Administrative Judge POLLACK.

This appeal arises out of a March 12, 1999 Contracting Officer's (CO's) decision involving Contract No. 50-1320-6-94 between the Natural Resources Conservation Service (NRCS or Government), U. S. Department of Agriculture, and Site Remediation Services, Inc. , of East Windsor, Connecticut. The contract, in the amount of \$1,075,586, was for construction repairs of an existing earthfill flood retarding dam at the Washington Mountain Meadow Project, October Mountain State Forest, Berkshire County, Massachusetts. The Appellant submitted a certified claim on January 21, 1999, for \$266,955 for the alleged additional costs associated with work involving the right downstream abutment foundation of the dam. The additional costs were attributed to an alleged changed condition due to the rock at the abutment being varied and jagged, and at a greater depth, which Appellant asserted, were contrary to the plans.

Appellant filed a timely appeal by letter of April 22, 1999, and the matter was docketed on April 29, 1999. The parties then engaged in the pleadings and in the interrogatory process, including the filing by the Government of a Motion for a More Specific Pleading. The Board, in a telephone conference, denied the Motion, finding that Appellant's pleadings were adequate and the information sought by the Government was more properly secured through discovery. Thereafter the parties continued to engage in discovery.

The Board has jurisdiction over this appeal under the Contract Disputes Act (CDA), 41 U.S.C. §§ 601-613, as amended.

On November 22, 1999, the Board held a telephone conference with the parties to move forward with scheduling and more particularly to discuss setting a time for hearing. The Board agreed at the request of the parties not to set a specific date; however, the Board advised that a follow-up conference would follow in 90 days at which time a firm schedule would be set.

By letter of December 6, 1999, the Board was notified by counsel for NRCS that the parties had reached a settlement. Thereafter, under cover letter of December 10, 1999, the Government submitted a copy of the signed Settlement and Mutual Release and noted that a Motion for Dismissal with Prejudice would follow from Appellant's counsel. Subsequently, Appellant's counsel filed such motion dated January 5, 2000.

The parties have entered into a settlement agreement and have requested that the appeal be dismissed with prejudice.

DECISION

The appeal is dismissed with prejudice, pursuant to Appellant's motion.

HOWARD A. POLLACK
Administrative Judge

Concurring:

EDWARD HOURY
Administrative Judge

JOSEPH A. VERGILIO
Administrative Judge

Issued at Washington, D. C.
February 15, 2000.